IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

FAMILY COURT APPEAL NO.76 OF 2005

Khushbu Kamlesh Doshi ..Appellant

Versus

Kamlesh Rasiklal Doshi ..Respondent

Mr.Amit Sale for the appellants

Mr.V.N.Kantawala with Ms. Apeksha Vora i/b. Kantawala & Co. for the respondent

CORAM: S.B.MHASE &
S.R.SATHE, JJ.

DATE : 5th July, 2005

P.C.

1. Heard.

2. The learned Counsel initially pointed out that the Family Court has passed an order on the basis of evidence adduced by the Respondent only and has granted decree of divorce on the grounds of cruelty and desertion. It transpires that after the evidence of the Original Petitioner was over, the Appellant-Original Respondent wife was to cross examine. However, adjournment was asked on that day. Total eight adjournments were sought and out of those 8

adjournments, some were granted and some were rejected. In order to demonstrate how the adjournments were taken, the learned Counsel for the Respondent has produced on record the xerox and certified copies of the applications for adjournments and the orders passed thereon by the Trial Judge. In spite of the rejection, on every date the matter was fixed on next date and again on next date there is an application for adjournment. In fact, the wife was under obligation to proceed for cross examination either by herself or by keeping her Advocate present. If the Advocate who was engaged in the proceeding was not ready to work, then she should have engaged some other lawyer, but for the reasons best known to her she has not followed any such procedure and the matter has gone without cross examination. Apart from that, she should have led her testimony by entering into the witness box, but that also she has not done. Therefore, the only evidence which is available for the Family Court for consideration is the testimony of the Original Petitioner-husband. By following the rule of non traverse the Judge has considered the said evidence and has concluded that there is sufficient evidence of cruelty and desertion.

2. We offered an opportunity to the learned Counsel

for the Appellant to demonstrate from the record that whatever record the Trial Court has considered is not sufficient to conclude cruelty and desertion. However, the learned Counsel was unable to point out such flaw from the judgment except contending that the findings are not correct. We find that the delatory practice of protracting the trial has been followed which has resulted into decree being passed as against the Original Respondent Wife. Therefore, there is no substance in the matter.

. Appeal is hereby rejected.

(S.R.SATHE, J.) (S.B.MHASE,J.)